

WHITESTOWN BOARD OF ZONING APPEALS

RULES AND PROCEDURES

ARTICLE 1: JURISDICTION AND AUTHORITY

Section 1. Legal Authority. The authority to review, approve, and grant the petitions listed in the Whitestown Unified Development Ordinance (UDO) shall rest with the Whitestown Board of Zoning Appeals (WBZA). Where permitted, the WBZA may, at its discretion, delegate such authority to the Administrator.

Section 2. Territorial Jurisdiction. The WBZA shall have jurisdiction over all land within the established municipal boundary of the Town of Whitestown as defined by description or map in the Boone County Recorder's Office.

Section 3. Administrator. With regard to the WBZA, the Town's Director of Planning, or a designee thereof, shall have the principal responsibility for the administration and enforcement of the UDO. The Administrator's duties shall include, but not be limited to:

a) Conducting inspections of structures and properties to determine compliance with the requirements of the UDO and all approvals granted by the WBZA in the execution of its duties as established by the UDO and Indiana Code (IC).

b) Receiving, processing docketing, and referring to the WBZA all appropriate applications.

c) Providing all such clerical and technical assistance as may be required by the WBZA in the execution of its duties as established by the UDO and Indiana Code.

Section 4. Administrator's Referral. The Administrator may, at the Administrator's discretion, refer applicants for permits and petitions to the WBZA for review and approval.

Section 5. Robert's Rules of Order. Robert's Rules of Order are hereby incorporated by reference and made a part of these rules and shall control on issues and procedures not expressly provided for herein.

ARTICLE 2: MEMBERSHIP

Section 1. Composition. The WBZA shall consist of five (5) members as prescribed by IC 36-7-4-902(a).

Section 2. Qualifications for Citizen Members. The qualifications for citizen members shall be as prescribed by IC 36-7-4-905.

Section 3. Certification. The Clerk-Treasurer of the Town of Whitestown shall certify members appointed by Town Council, the Town Council President shall certify the President's appointments, and the Whitestown Plan Commission (WPC) shall certify its appointment. The certificates shall be sent to and made a part of the records of the WBZA.

Section 4. Removal of Members. Members may be removed from the WBZA by the respective appointing authority prior to the end of their term for failure to appear at three (3) consecutive, regularly scheduled WBZA meetings.

ARTICLE 3: DUTIES AND POWERS

Section 1. Duties. The following duties should be interpreted as activities that are obligations of the WBZA, as prescribed by IC 36-7-4-916, 36-7-4-918.1, and 36-7-4-918.2:

a) Prescribe the procedures for: i) filing appeals, ii) the application for variances, special exceptions, special uses, contingent uses, and conditional uses, iii) the giving of notice, iv) the conduct of hearings, and v) the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).

b) Approve or deny: i) special exceptions, ii) special uses, iii) contingent uses, iv) conditional uses, and v) variances of use.

c) Hear and determine appeals from and review: i) any order, requirement, decision, or determination made by the Administrator or staff member under the UDO, ii) any order, requirement, decision, or determination made by an administrative board or other body except the WPC in relation to the enforcement of the UDO, or iii) any order, requirement, decision, or determination made by an administrative board or other body except the WPC in relation to the enforcement of an UDO requiring the procurement of an improvement location or occupancy permit.

Section 2. Powers. The following powers should be interpreted as activities that are optional and may be initiated by the WBZA within its jurisdiction pursuant to IC 36-7-4-916, if the UDO establishes additional divisions of the WBZA under IC 36-7-4-901: a) the allocation of cases filed among the divisions of the board of zoning appeals; and b) the fixing of dates for hearings by the divisions.

Section 3. Commitments. Pursuant to IC 36-7-4-1015(a), as a condition to the approval of a a) special exception, b) special use, c) contingent use, d) conditional use, or e) variance, the WBZA may require or allow the owner of a parcel of real property to make a commitment to the WBZA concerning the use or development of that parcel. Pursuant to IC 36-7-4-1015(c), the WBZA hereby declares that the criteria to be considered when an owner applies for the modification or termination of a commitment made under these rules are the same criteria that applied to the proposal when the WBZA originally granted approval.

ARTICLE 4: ACTIONS AND DECISIONS

Section 1. Quorum. A quorum is a majority of the full membership of the WBZA.

Section 2. Official Action. Action of the WBZA is official when concurred by a majority of the full membership.

Section 3. Tie Vote. When a vote of the WBZA results in a tie (2-2 vote), the matter may be resolved by:

- a) A new motion to reconsider the matter and followed by a re-vote; or
- b) Re-docketing the matter for the next regularly scheduled meeting of the WBZA.

Section 4. Indecisive Vote. In any case where a vote of the WBZA does not result in official action (2-1 vote), the petition shall be automatically re-docketed for the next regularly scheduled meeting of the WBZA.

Section 5. Continuances.

a) A continuance may be requested for sufficient cause by the petitioner, by an interested party, or a member of the WBZA. It shall be within the discretion of the WBZA to grant or deny any request for continuance. Re-notification shall not be required if a petition is continued at a properly noticed public hearing/meeting to a specified future hearing/meeting date of the WBZA.

b) A request for continuance by the petitioner may be filed in writing prior to the WBZA's hearing/meeting or made orally at the beginning of the WBZA meeting when the agenda is considered. However, the petitioner shall be prepared to move forward with their petition until the continuance request is granted by the WBZA.

c) A request for continuance by an interested party may be filed in writing prior to the WBZA's hearing/meeting or made orally at the beginning of the WBZA meeting when the agenda is considered. The interested party shall be prepared for the petition to move forward until the continuance request is granted by the WBZA. For purposes of a public hearing, an "interested party" is any individual whose right to use, acquire, or enjoy property is or may be affected by action taken by the WBZA.

d) A member of the WBZA may make a motion of continuance for consideration by the WBZA.

Section 6. Withdrawal of Petitions. No petition may be withdrawn by the petitioner after a vote has been ordered by the Chairperson. A petition which has been withdrawn by the petitioner shall not again be placed on the docket for consideration by the WBZA within a period of ninety (90) days from the date of withdrawal, except upon a motion by a WBZA member to permit re-docketing and approved by the unanimous vote of the quorum present.

Section 7. Dismissal. The WBZA may dismiss a case for want of prosecution or for lack of jurisdiction.

ARTICLE 5: MEETING SCHEDULE

Section 1. Application Schedule. The Administrator shall develop and maintain an annual Application Schedule, which comprises a Calendar of Meetings and Filing Dates for the WBZA. The existence of this calendar shall not be interpreted as prohibiting special meetings of the WBZA.

Section 2. Coordination of Calendars. The calendar of the WBZA shall be coordinated with that of the WPC to ensure the efficient processing of applications.

Section 3. Compliance with Laws. All meeting and filing dates shall be based on the requirements of the UDO and the Indiana Code.

Section 4. Approval of Dates. The Calendar of Meetings and Filing Dates shall be prepared by the Administrator and approved by the WBZA.

Section 5. Maintenance. The Calendar of Meeting and Filing Dates shall be reviewed and updated annually by the Administrator and posted in the Whitestown Municipal Complex and/or on the Town's website.

ARTICLE 6: PETITION HEARING PROCEDURES

Section 1. Order of Business. The WBZA shall follow the following order of business:

- a) Call to Order.
- b) Pledge of Allegiance.
- c) Roll Call.
- d) Approval of the Agenda (and consideration of requested continuances).
- e) Minutes.
- f) Public Comment for items not on the agenda
- g) Old Business: i) Public hearings on petitions, ii) Other petitions for consideration, and
iii) Other business.
- h) New Business: i) Public hearings on petitions, ii) Other petitions for consideration, and
iii) Other business.
- i) New Business from the Floor.
- j) Announcements.
- k) Adjournment.

Section 2. Procedure for Public Comment for Items Not on the agenda. The WBZA shall allot a total of five (5) minutes for public comment for items not on the agenda. Each individual wishing to speak shall be allowed a maximum of two (2) minutes.

Section 3. Procedure for Petition Consideration. Each petition before the WBZA shall generally be allotted not more than forty-five minutes for the presentation of evidence, comments, and questions at the public hearing. The Chairperson shall have the authority to extend the time periods specified below where appropriate, unless otherwise directed by a majority of the quorum present:

a) *Introduction*. The Chairperson shall introduce the petition and open it for discussion.

b) *Presentation*. The petitioner shall have a total of fifteen (15) minutes (not including the time allotted for their closing remarks) for the presentation of their petition.

c) *Staff and Public Officials' Report*. The Administrator shall present the staff and public official's report (not to exceed five (5) minutes) for the petition.

d) *Public Discussion*. Members of the public shall have a total of twenty (20) minutes to present evidence, comments, and questions relevant to the matter being considered. In any case where there are multiple members of the public who wish to speak, the Chairperson shall have the discretion to limit the amount of time that each individual is allotted.

e) *Closing Remarks by Petitioner*. The petitioner shall have a total of five (5) minutes for closing remarks as well as responding to the presentation of evidence, comments, and questions raised during the public discussion.

f) *Discussion of WBZA*. The Chairperson shall then close the public hearing and call for questions and comments from members of the WBZA. WBZA members shall be entitled to question the petitioner, the staff, legal counsel, and/or members of the public who have presented evidence, comments, and questions relevant to the matter being considered.

g) *Call for Vote*. The Chairperson shall call for a motion and a second on the case being heard. Upon a motion being made and seconded, the Chairperson shall then call for discussion on the motion.

h) *Voting*. After discussion on the motion, the Chairperson shall then call for a vote. All decisions shall be by voice vote. However, if the Chairperson deems it necessary, the Administrator shall do a roll call for a vote on the motion.

Section 4. Meeting Limitations. No petition shall be introduced for consideration after 10:00pm. Agenda items remaining on the agenda shall be automatically placed at the beginning of the agenda at the next regularly scheduled meeting of the WBZA.

ARTICLE 7: CONDUCT OF MEETINGS

Section 1. Orderly Conduct. Every person appearing before the WBZA shall abide by the order and direction of the Chairperson. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges and shall be dealt with as the Chairperson deems fair and proper.

Section 2. Appearance at Meetings. Any party may appear in person or by representative (person, agent, attorney, etc.) at WBZA meetings. A representative may testify to the facts that he has particular knowledge of that relate to the issues of the petition. In so testifying, the representative shall be subject to cross-examination and questions.

Section 3. Contacting Members. No person (including applicants, remonstrators, and others) may communicate with any member of the WBZA before a hearing with the intent to influence the member's action on a petition. However, pursuant to IC 36-7-4-920, the Administrator may, not less than five (5) days before the hearing of a petition, file with the WBZA a written statement setting forth any facts or opinions relating to the petition.

Section 4. Basis for Decisions. Actions of the WBZA shall be based upon:

- a) Information submitted to the Administrator and made part of the permanent record;
- b) The information submitted at the meeting and made part of the permanent record;
- c) The testimony received at the meeting and made part of the permanent record;
- d) The applicable ordinances that are in effect and relevant to the petition (i.e. UDO).

Section 5. Site Visit. Members shall have the right to inspect land involved in any petition to be heard by the WBZA, either individually or jointly. However, no more than two (2) members shall inspect the subject land at the same time.

Section 6. Bias or Prejudice. During presentation and discussion of the subject petition, a member who is biased or prejudiced, or otherwise unable to be impartial, shall not sit as a member of the WBZA nor vote on the particular petition; however they may participate in the discussion as a member of the public.

Section 7. Conflict of Interest. During presentation and discussion of the subject petition, a member who has a conflict of interest shall not sit as a member of the WBZA nor vote on the particular petition; however they may participate in the discussion as a member of the public. A member of the WBZA shall have a conflict of interest with regard to a petition if: a) they, or a family member, have financial interest in a subject property or petition, or b) they own (individually or jointly) property close enough to a subject petition to receive written notice.

Section 8. Record of Hearing. The Administrator shall manage files and maintain a record of all petitions, hearings, and meetings of the WBZA. Copies of such record of any hearing may be

ordered by any party, and cost thereof shall be paid by the party ordering such copy or copies in accordance with the adopted fees. In all cases heard by the WBZA, the vote shall be recorded in the minutes of the meeting.

Section 9. Attendance. WBZA members are expected to attend all meetings of the WBZA. To ensure a quorum, members shall notify the Administrator at their earliest convenience if they are not able to attend a scheduled meeting either entirely or in part. Members who fail to appear at meetings may be subject to removal from the WBZA (see *Article 2, Section 4: Removal of Members*).

Section 10. Open Door Law. The WBZA shall comply with IC 5-14-1.5, the Indiana Open Door Law, with respect to the use of agendas and requirements for public meetings.

ARTICLE 8: FILING OF PETITIONS

Section 1. Policies:

a) *Prior Code Violation Resolution*. A petition may not be filed for a property that has a previously documented and unresolved code violation until the violation has been resolved. However, the Administrator may allow the filing of a petition if it is shown that it will directly contribute to the resolution of the violation.

b) *Adverse Decision*. A petition that receives an adverse decision from the WBZA may not be refiled for a period of one (1) year from the date of the adverse decision. The Administrator shall determine if a new petition significantly differs from the previous petition that received the adverse decision.

Section 2. Filing Required Prior to Hearing. All petitions shall be filed in accordance with the proper forms adopted by the WBZA, in the required numbers, and in the required form, and in accordance with the adopted Calendar of Meeting and Filing Dates. If the Administrator finds that a petition is insufficient, not in accordance with the proper forms, or not in compliance with the UDO, said petition shall be considered “incomplete” and shall not be accepted until such time as it becomes complete.

Section 3. Attendance at Hearing Required. All petitioners or designated representatives shall attend the public hearing in person to present the petition, to answer questions from the WBZA, and to make rebuttal or answer questions to remonstrators. Failure to meet this requirement may result in the dismissal of the petition.

Section 4. Filing on WBZA Forms. Any communication purporting to be a petition not on forms furnished by the WBZA, or not containing the information called for on said forms, shall be regarded as a mere notice of intention to file and shall be of no force or effect until it is made on and in the form required. All forms, including the instructions therewith, are hereby declared to be a part of these rules.

Section 5. Filing Fee. The petitioner shall pay the appropriate filing fee at the time of filing their petition to cover expenses of processing the petition. The amount of fees shall be in accordance with the fee schedule as adopted by the Town Council.

ARTICLE 9: PUBLIC NOTICE

Section 1. Notice Requirements. Notice of petitions to be heard by the WBZA shall be given to all interested parties or property owners in the manner described in this Article, or as otherwise directed by the WBZA.

Section 2. Notification by Newspaper. The petitioner shall publish notice at least ten (10) days prior to the scheduled hearing in The Lebanon Reporter and/or the Zionsville Times Sentinel. The Administrator shall advise the petitioner whether publication is necessary in either or both newspapers. Proof of publication affidavit from the publisher shall be placed in the file at least three (3) days prior to the hearing. The cost of publication shall be borne by the applicant.

Section 3. Notification by Mail. The petitioner shall provide written notice by mail to all interested parties at least ten (10) days prior to the scheduled hearing on the WBZA's prescribed form, by Certificate of Mailing or certified mail. Notice shall be postmarked at least ten (10) days prior to the hearing. Receipts and/or the Certificate of Mailing shall be submitted at least three (3) days prior to the hearing.

Section 4. Interested Parties. For the purpose of written notice by mail, "interested parties" shall be defined as property owners whose parcels are within two (2) parcels deep, in any direction, from the property that is the subject of the petition, except that a property owner whose entire parcel is more than six hundred (600) feet from the subject property shall not be considered an interested party.

Section 5. Notification by Sign. The petitioner shall also provide notice to the general public by placing a sign approved by the Administrator on each property that is the subject of the petition. The sign shall be placed no less than fourteen (14) days prior to the hearing and removed no more than three (3) days after.

ARTICLE 10: AGENDAS

Section 1. Docketing of Petitions. Each petition shall be filed in proper form, with the required date, numbered serially, and placed on the docket by the Administrator. The Administrator shall be responsible for the preparation and distribution of an agenda for each meeting of the WBZA. Agendas shall be distributed prior to each meeting to the WBZA members, legal counsel, and the media. Other interested or affected parties may request agendas.

Section 2. Order of Hearing Petitions. On the date set for hearing, petitions shall come before the WBZA either in the regular order of their consecutive numbers, or grouped by similar petitions, as determined by the Administrator in setting the meeting agenda. However,

petitions re-docketed or continued from a previous meeting shall be heard as Old Business, before petitions docketed as New Business.

Section 3. Agenda Limitations. In preparing the docket for each public hearing of the WBZA, the cases scheduled shall be limited to a reasonable number as determined by the Administrator.

ARTICLE 11: OFFICERS

Section 1. Chairperson. A Chairperson shall be elected at the first regular meeting of the WBZA in each calendar year. The Chairperson shall preside at all WBZA meetings. Meetings shall be held at the call of the Chairperson or at other times which the WBZA deems necessary.

Section 2. Vice Chairperson. A Vice Chairperson shall be elected in the manner prescribed for the Chairperson and shall have the authority to act as Chairperson during the absence or disability of the duly elected Chairperson.

Section 3. Secretary. The Administrator shall designate a person to serve as the Secretary of the WBZA. The Secretary shall maintain responsibility, with the Administrator, for all records and correspondence for the WBZA. They shall cause minutes of the WBZA meeting to be maintained in permanent volume, notice to be served of all public hearings and notification to be served to all members of all meetings. The Secretary, subject to the direction of the Chairperson and the supervision of the Administrator, shall record all important facts pertaining to each meeting and hearing, all petitions and resolutions acted upon by the WBZA, and all votes of members of the WBZA upon the final determination of any questions, indicating the names of any members absent or otherwise unable to vote.

Section 4. Temporary Chairperson. In the absence of both the Chairperson and Vice Chairperson, a temporary presiding officer shall be selected from the members present at the meeting.

Section 5. Court Reporter. A court reporter may be used for keeping and transcribing minutes of regular or special meetings of the WBZA.

Section 6. Points of Order. The Chairperson shall decide all points of order of procedure in accordance with these rules, unless otherwise directed by a majority of the quorum present.

ARTICLE 12: AMENDING OR SUSPENDING THE RULES

Section 1. Amendments. Amendments to these rules may be made by the WBZA only upon the affirmative vote of a majority of the full membership of the WBZA.

Section 2. Presentation of Amendments. Any amendment to these rules must be presented at least fourteen (14) days prior to voting on the amendment.

Section 3. Suspension of Rules. The suspension of any rule may be ordered at any meeting of the WBZA by a majority of the full membership of the WBZA.